In the High Court of Uttaranchal, at Nainital
Government Appeal No. 1109/2001
(Old No.1605/1986)

State of U.P. ….Appellant.

Versus

Kharak Singh S/o Himmat Singh
R/o Village Mooda bath Vetalsanda
Mustazar, P.S. Khatima
District Nainital .....Respondent.

Sri Nandan Arya, learned A.G.A. for the State.
Sri S.C. Bhatt, learned counsel for the respondent.

Hon'ble B.C. Kandpal,J.

This appeal has been preferred by the State against the judgment and order dated 30-11-1985, passed by Munsif Magistrate, Khatima, District Nainital (Now District Udham Singh Nagar) in Criminal Case No. 149 of 1985 (State Versus Kharak Singh), acquitting the accused/respondent for the offences U/Ss 26-D and 61-A of Indian Forest Act, 1927.

2- Brief facts giving rise to this appeal are that, Divisional Forest Officer, North Pilibhit filed complaint against the accused/respondent in the court of Munsif Magistrate, Khatima, with the allegations that the accused/respondent has taken illegal possession of Reserve Forest land and caused damage to the Department by cultivating the land. The accused/respondent denied the allegations. In support of its case the complainant/department adduced evidence in the case. The trial court on perusal of the material on record and having heard the learned counsel for the parties, came to he conclusion that the complainant side has not been successful in

establishing the guilt of the accused/respondent and accordingly acquitted him from the charges U/Ss 26-D and 61-A of Indian Forest Act, 1927.

3- Feeling aggrieved by the acquittal of the accused/respondent, the State has filed this appeal before the Allahabad High Court, which after creation of new State, has been transferred to this Court for disposal.

4- Heard learned A.G.A. for the State, learned counsel for the respondent/accused and perused the record.

5- Perusal of record shows that the Department could not establish the exact location of the alleged illegal occupation of the accused/respondent. In the complaint itself specific location of the disputed land has not been mentioned. Only it has been mentioned that particular area of Pillar number and Compartment number was encroached upon. The witnesses produced by the Department have also could not tell the specific land which was allegedly occupied by the accused/respondent. Accordingly to the Department huge damage was caused to the land of Reserved Forest, but the witnesses have not been able to establish as to how-much damage was caused. The witnesses also could not state the date, time and place of the occurrence by cultivating and causing damage to the forest land. On the other hand the accused/respondent filed some document and claimed that the possession on the disputed land was given to his father by the Prescribed Authority in the year 1978. The learned Magistrate also observed that there are material contradiction in the statements of the witnesses and the papers submitted with the complaint.

6- The judgment of acquittal is based on cogent and valid reasons in disbelieving the evidence of witnesses and also in doubting the prosecution case, hence no interference is called for in the impugned judgment passed by the court below. I do not find anywhere in the impugned judgment that the evidence are either perverse or unreasonable. The reasons impelling the trail court to acquit the accused person is not unreasonable.

7- I do not find any ground to interfere in the impugned judgment and order passed by the court below, acquitting the accused/respondent.

8- The appeal fails and is liable to be dismissed.

9- Accordingly the appeal is dismissed.

(B.C. Kandpal, J.)

Dated: 19-7-2006

ISB